



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable C. P. Lockhart, Chairman
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. 0-4639

Re: Pertaining to claim against
Lawyers Lloyds of Texas, on
fidelity bond by the Board
of Insurance Commissioners
for the benefit of William-
son County Burial Associa-
tion.

Your letter of June 5, 1942, requests this de-
partment to advise you whether or not to accept \$2,500.00
tendered by Lawyers Lloyds of Texas or contend for the
full amount of a shortage totaling \$5,450.00 under the
following facts as stated:

"In an examination of the Williamson County
Burial Association of Taylor, Texas, by this De-
partment as of November 30, 1941, it was disclo-
sed that the principal officer of the organiza-
tion, L. E. Latson, could not account for \$3,450.00
of Mortuary Funds received by the Association.
L. E. Latson, as the principal officer, was bond-
ed with Lawyers Lloyds of Texas in accordance
with the requirements of Section 5, Article
5038-1, Vernon's Revised Civil Statutes of Texas.
The original bond is dated December 12, 1939,
and is in the amount of \$2,500.00. On November
29, 1940, Lawyers Lloyds issued an Endorse-
ment extending the 'expiration date' of the
bond until December 12, 1941. Lawyers Lloyds
has now tendered the sum of \$2,500.00 and
contends that such is their maximum liabil-
ity under the two documents mentioned. Since
\$1,950.00 of the loss was incurred during the

Honorable O. P. Lockhart, Chairman, Page 2

original period (the bond was effective December 12, 1939, but provides no termination date except by inference in the Endorsement extending the 'expiration date') from December 12, 1939 to December 12, 1940, and \$1,500.00 was incurred during the 'extended' period; this Department desires to know if Lawyers Lloyds of Texas is not liable for the full \$3,450.00."

You also enclosed a photostatic copy of the bond in question together with the Endorsement.

Under the facts stated, there would necessarily arise for our determination the sole question of whether or not the maximum penalty stated in the bond is cumulative for the extended contract period. Viewing the provisions of the bond from the facts submitted, we are unable to hold the liability of the surety to be less than the full amount of the shortage.

The identical question is involved in Board of Insurance Commissioners v. Lawyers Lloyds of Texas, et al, being No. 65,700, and pending on the docket of the 98th District Court of Travis County, Texas.

We call your attention to Article 4875a-7, Vernon's Annotated Civil Statutes, providing the procedure for recovery on such a bond, which statute reads:

"When the Board is informed that any officer of any such association has violated the terms of either of said bonds it shall demand a written explanation of such officer as to such charge, and if after such explanation the Board is not satisfied as to the existing facts in controversy it shall notify such officer to be and appear in Travis County with such records, writings, and other correspondence and facts as the Board deems proper, not earlier than ten days or later than fifteen days from service

Honorable O. P. Lockhart, Chairman, Page 3

of notice, and it shall there conduct an examination into such affairs, and if upon such examination the Board shall become satisfied that the terms of said bond has been violated by said officer the Board shall prepare a written statement covering said facts and deliver same to the Attorney General of Texas, whose duty it shall be to investigate said charges and if satisfied that the terms of said bond have been violated he shall file suit on said bond in the name of the Board of Insurance Commissioners of Texas for the benefit of the beneficiaries thereof against said officer as principal and the sureties of his bond for the recovery of said amounts due by said officer, and all costs of suit in some court of competent jurisdiction, in Travis County, Texas."

In view of the foregoing, it is the opinion of this Department that all evidence and facts pertaining to the claim under this bond should be referred to the Attorney General for disposition.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (s) Wm. J. R. King
Assistant

WMK:LM

APPROVED JUL 9, 1942
GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION COMMITTEE
By B. W. B. Chairman